

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: GENERIC PHARMACEUTICALS
PRICING ANTITRUST LITIGATION

MDL 2724
16-md-2724

THIS DOCUMENT RELATES TO:

*The State of Connecticut, et al. v.
Teva Pharmaceuticals USA, Inc.,
et al.*

HON. CYNTHIA M. RUFE

Civil Action No.

2:19-cv-02407-CMR

**NOTICE OF SUPPLEMENTAL AUTHORITY IN SUPPORT OF
DEFENDANTS' JOINT MOTIONS TO DISMISS
PLAINTIFFS' FEDERAL AND STATE LAW CLAIMS**

Defendants submit this Notice of Supplemental Authority in further support of their Joint Motion to Dismiss Plaintiffs' Federal-Law Claims, Dkt. 193, and their Joint Motion to Dismiss Plaintiffs' State-Law Claims, Dkt. 192. The joint motions argue, *inter alia*, that disgorgement is not an available remedy to the States under Section 16 of the Clayton Act, 15 U.S.C. § 26, which permits plaintiffs to seek "injunctive relief" for harm caused by "threatened loss or damage by a violation of the antitrust laws," or under certain state laws authorizing "injunctions" or "injunctive relief."

On April 22, 2021, the Supreme Court issued its opinion in *AMG Capital Management, LLC v. FTC*, 141 S. Ct. 1341 (2021), analyzing the availability of equitable monetary relief in a similar context: Section 13(b) of the Federal Trade Commission Act (15 U.S.C. § 53(b)), which, like Section 16 of the Clayton Act, governs forward-looking remedies and authorizes injunctive relief. The Court held that Section 13(b) does not allow for recovery of equitable monetary remedies. *See AMG Capital*, 141 S. Ct. at 1347 ("An 'injunction' is not the same as an award of

equitable monetary relief”). The Court’s reasoning and holding closely track Judge O’Scannlain’s special concurrence in the Ninth Circuit’s decision in *AMG Capital*, which Defendants cited in their reply brief in support of their joint motion to dismiss. Dkt. 228 at 3–4. Further, the Court in its opinion cited *FTC v. Abbvie Inc.*, 976 F.3d 327 (3d Cir. 2020), leaving that decision in place as controlling precedent in the Third Circuit. *AMG Capital*, 141 S. Ct. at 1351. The parties discuss *Abbvie* throughout the briefing. *See* Dkt. 193-1 at 1, 4–5; Dkt. 228 at 2–6, 10; Dkt. 233 at 4–5.

AMG Capital is relevant to the following sections of Defendants’ briefs in support of their joint motions to dismiss: Defendants’ Memorandum of Law in Support of Their Joint Motion to Dismiss Plaintiffs’ Federal-Law Claims for Lack of Standing, Dkt. 193-1 at 4–6 (“Section 16 of the Clayton Act Does Not Authorize Disgorgement as a Remedy”); Defendants’ Reply in Support of Their Joint Motion to Dismiss Plaintiffs’ Federal-Law Claims for Lack of Standing, Dkt. 228 at 1–6 (“Section 16 Of The Clayton Act Does Not Provide for a Disgorgement Remedy”); Defendants’ Memorandum of Law in Support of Their Joint Motion to Dismiss Plaintiffs’ State-Law Claims, Dkt. 192-1 at 3, 7–9, 13–14 (arguing that certain States’ claims for monetary relief must be dismissed because their claims are asserted under statutes that only permit injunctive relief); Defendants’ Reply in Support of Their Joint Motion to Dismiss Plaintiffs’ State-Law Claims, Dkt. 229-0 at 19–21, 36 (same).

A copy of the Supreme Court’s opinion in *AMG Capital* is attached hereto as Exhibit A.

Dated: May 5, 2021

/s/ Sheron Korpus

Sheron Korpus
Seth A. Moskowitz
Seth Davis
David M. Max
KASOWITZ BENSON TORRES LLP
1633 Broadway
New York, NY 10019
Telephone: (212) 506-1700
skorpus@kasowitz.com
smoskowitz@kasowitz.com
sdavis@kasowitz.com
dmax@kasowitz.com

*Counsel for Defendants Actavis Elizabeth,
LLC, Actavis Holdco U.S., Inc., and Actavis
Pharma, Inc.*

/s/ Steven A. Reed

R. Brendan Fee
Steven A. Reed
Melina R. DiMattio
MORGAN, LEWIS & BOCKIUS LLP
1701 Market Street
Philadelphia, PA 19103
Telephone: (215) 963-5000
Facsimile: (215) 963-5001
brendan.fee@morganlewis.com
steve.reed@morganlewis.com
melina.dimattio@morganlewis.com

Wendy West Feinstein
MORGAN, LEWIS & BOCKIUS LLP
One Oxford Centre, Thirty-Second Floor
Pittsburgh, PA 15219
Telephone: (412) 560-7455
Facsimile: (415) 560-7001
wendy.feinstein@morganlewis.com

*Counsel for Defendant Glenmark
Pharmaceuticals, Inc., USA*

Respectfully submitted,

/s/ Benjamin F. Holt

Benjamin F. Holt
Adam K. Levin
Justin W. Bernick
HOGAN LOVELLS US LLP
555 Thirteenth Street, NW
Washington, D.C. 20004
Telephone: (202) 637-5600
benjamin.holt@hoganlovells.com
adam.levin@hoganlovells.com
justin.bernick@hoganlovells.com

Jasmeet K. Ahuja
HOGAN LOVELLS US LLP
1735 Market Street, 23rd Floor
Philadelphia, PA 19103
Telephone: (267) 675-4600
jasmeet.ahuja@hoganlovells.com

Counsel for Defendant Mylan Pharmaceuticals Inc.

/s/ Saul P. Morgenstern

Saul P. Morgenstern
Margaret A. Rogers
**ARNOLD & PORTER KAYE SCHOLER
LLP**
250 W. 55th Street
New York, NY 10019
Telephone: (212) 836-8000
Facsimile: (212) 836-8689
margaret.rogers@arnoldporter.com
saul.morgenstern@arnoldporter.com

Laura S. Shores
**ARNOLD & PORTER KAYE SCHOLER
LLP**
601 Massachusetts Avenue
Washington, DC 20001
Telephone: (202) 942-5000
laura.shores@arnoldporter.com

*Counsel for Defendants Sandoz Inc. and
Fougera Pharmaceuticals Inc.*

/s/ Leiv Blad

Leiv Blad
Zarema Jaramillo
Meg Slachetka
LOWENSTEIN SANDLER LLP
2200 Pennsylvania Avenue
Washington, D.C. 20037
Telephone: (202) 753-3800
Facsimile: (202) 753-3838
lblad@lowenstein.com
zjaramillo@lowenstein.com
mslachetka@lowenstein.com

*Counsel for Defendant Lupin Pharmaceuticals,
Inc. and David Berthold*

/s/ John E. Schmidtlein

John E. Schmidtlein
Sarah F. Kirkpatrick
WILLIAMS & CONNOLLY LLP
725 Twelfth Street, N.W.
Washington, D.C. 20005
Telephone: (202) 434-5000
Facsimile: (202) 434-5029
jschmidtlein@wc.com
skirkpatrick@wc.com

*Counsel for Defendant Par Pharmaceutical
Companies, Inc.*

/s/ Raymond A. Jacobsen, Jr.

Raymond A. Jacobsen, Jr.
Paul M. Thompson (Pa. Bar No. 82017)
Lisa (Peterson) Rumin
MCDERMOTT WILL & EMERY LLP
500 North Capitol Street, NW
Washington, D.C. 20001
Telephone: (202) 756-8000
rayjacobsen@mwe.com
pthompson@mwe.com
lrumin@mwe.com

Nicole L. Castle
MCDERMOTT WILL & EMERY LLP
340 Madison Avenue
New York, NY 10173
Telephone: (212) 547-5400
ncastle@mwe.com

*Counsel for Defendants Amneal
Pharmaceuticals, Inc., Amneal
Pharmaceuticals LLC*

/s/ Jay P. Lefkowitz, P.C.

Jay P. Lefkowitz, P.C.
Devora W. Allon, P.C.
Alexia R. Brancato
KIRKLAND & ELLIS LLP
601 Lexington Avenue
New York, NY 10022
Telephone: (212) 446-4800
jay.lefkowitz@kirkland.com
devora.allon@kirkland.com
alexia.brancato@kirkland.com

*Counsel for Defendant Upsher-Smith
Laboratories, LLC*

/s/ Wayne A. Mack

Wayne A. Mack
Sean P. McConnell
Sarah O'Laughlin Kulik
DUANE MORRIS LLP
30 S. 17th Street
Philadelphia, PA 19103
Telephone: (215) 979-1152
wamack@duanemorris.com
spmccConnell@duanemorris.com
sckulik@duanemorris.com

*Counsel for Defendant Aurobindo Pharma USA,
Inc.*

/s/ J. Gordon Cooney, Jr.

J. Gordon Cooney, Jr.
John J. Pease, III
Alison Tanchyk
William T. McEnroe
MORGAN, LEWIS & BOCKIUS LLP
1701 Market Street
Philadelphia, PA 19103
Telephone: (215) 963-5000
Facsimile: (215) 963-5001
jgcooney@morganlewis.com
john.pease@morganlewis.com
alison.tanchyk@morganlewis.com
william.mcenroe@morganlewis.com

Amanda B. Robinson
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Avenue, NW
Washington, D.C. 20004
Telephone: (202) 739-3000
Facsimile: (202) 739-3001
amanda.robinson@morganlewis.com

*Counsel for Defendant Teva
Pharmaceuticals USA, Inc.*

/s/ James W. Matthews

James W. Matthews
Katy E. Koski
John F. Nagle
FOLEY & LARDNER LLP
111 Huntington Avenue
Boston, MA 02199
Telephone: (617) 342-4000
jmatthews@foley.com
kkoski@foley.com
jnagle@foley.com

James T. McKeown
Elizabeth A. N. Haas
Kate E. Gehl
FOLEY & LARDNER LLP
777 E. Wisconsin Avenue
Milwaukee, WI 53202
Telephone: (414) 271-2400
jmckeown@foley.com
ehaas@foley.com
kgehl@foley.com

Steven F. Cherry
April N. Williams
Claire Bergeron
**WILMER CUTLER PICKERING
HALE AND DORR LLP**
1875 Pennsylvania Avenue, NW
Washington, D.C. 20006
Telephone: (202) 663-6000
steven.cherry@wilmerhale.com
april.williams@wilmerhale.com
claire.bergeron@wilmerhale.com

Terry M. Henry
Melanie S. Carter
BLANK ROME LLP
One Logan Square
130 North 18th Street
Philadelphia, PA 19103
Telephone: (215) 569-5644
thenry@blankrome.com
mcarter@blankrome.com

Counsel for Defendant Apotex Corp.

/s/ Damon W. Suden

William A. Escobar
Damon W. Suden
Clifford Katz
KELLEY DRYE & WARREN LLP
3 World Trade Center
175 Greenwich Street
New York, NY 10007
Telephone: (212) 808-7800
Facsimile: (212) 808-7987
wescobar@kelleydrye.com
dsuden@kelleydrye.com
ckatz@kelleydrye.com

Counsel for Defendant Wockhardt USA LLC

/s/ Ilana H. Eisenstein

Ilana H. Eisenstein
Ben C. Fabens-Lassen
DLA PIPER LLP (US)
1650 Market Street, Suite 5000
Philadelphia, PA 19103
Telephone: (215) 656-3300
ilana.eisenstein@dlapiper.com
ben.fabens-lassen@dlapiper.com

Edward S. Scheidman
DLA PIPER LLP (US)
500 Eighth Street, NW
Washington, DC 20004
Telephone: (202) 799-4000
edward.scheidman@dlapiper.com

*Counsel for Defendant Pfizer Inc. and
Greenstone, LLC*

/s/ Jason R. Parish

Jason R. Parish
Martin J. Amundson
**BUCHANAN INGERSOLL &
ROONEY PC**
1700 K Street, NW, Suite 300
Washington, DC 20006
Telephone: (202) 452-7900
Facsimile: (202) 452-7989
jason.parish@bipc.com
martin.amundson@bipc.com

Bradley Kitlowski
**BUCHANAN INGERSOLL &
ROONEY PC**
Union Trust Building
Pittsburgh, PA 15219
Telephone: (412) 562-8800
Facsimile: (412) 562-1041
bradley.kitlowski@bipc.com

*Counsel for Defendant Zydus
Pharmaceuticals (USA) Inc.*

/s/ Roger B. Kaplan

Roger B. Kaplan
Jason Kislin
Aaron Van Nostrand
GREENBERG TRAURIG, LLP
500 Campus Drive, Suite 400
Florham Park, NJ 07932
Telephone: (973) 360-7957
Facsimile: (973) 295-1257
kaplanr@gtlaw.com
kislinj@gtlaw.com
vannostranda@gtlaw.com

Brian T. Feeney
GREENBERG TRAURIG, LLP
1717 Arch St., Suite 400
Philadelphia, PA 19103
Telephone: (215) 988-7812
Facsimile: (215) 717-5265
feeneyb@gtlaw.com

*Counsel for Defendant Dr. Reddy's
Laboratories, Inc.*

/s/ Stacy Anne Mahoney

Stacey Anne Mahoney
MORGAN LEWIS & BOCKIUS LLP
101 Park Avenue
New York, NY 10178
Telephone: (212) 309-6000
Facsimile: (212) 309-6001
stacey.mahoney@morganlewis.com

*Counsel for Defendant Breckenridge
Pharmaceutical, Inc.*

/s/ Ryan T. Becker

Gerald E. Arth
Ryan T. Becker
Nathan Buchter
FOX ROTHSCHILD LLP
2000 Market Street, 20th Floor
Philadelphia, PA 19103
Telephone: (215) 299-2000
Facsimile: (215) 299-2150
garth@foxrothschild.com
rbecker@foxrothschild.com
nbuchter@foxrothschild.com

George G. Gordon
Julia Chapman
DECHERT LLP
2929 Arch Street
Philadelphia, PA 19104
Telephone: (215) 994-2382
Facsimile: (215) 994-2382
george.gordon@dechert.com
julia.chapman@dechert.com

*Counsel for Defendant Lannett Company,
Inc.*

/s/ Erik T. Koons

John M. Taladay
Erik T. Koons
Stacy L. Turner
Christopher P. Wilson
BAKER BOTTS LLP
700 K Street, NW
Washington, DC 20004
Telephone: (202) 639-7700
Facsimile: (202) 639-7890
erik.koons@bakerbotts.com
john.taladay@bakerbotts.com
stacy.turner@bakerbotts.com
christopher.wilson@bakerbotts.com

Lauri A. Kavulich
Ann E. Lemmo
CLARK HILL PLC
2001 Market St, Suite 2620
Philadelphia, PA 19103
Telephone: (215) 640-8500
Facsimile: (215) 640-8501
lkavulich@clarkhill.com
alemmono@clarkhill.com

Lindsay S. Fouse
CLARK HILL PLC
301 Grant St, 14th Floor
Pittsburgh, PA 15219
Telephone: (412) 394-7711
Facsimile: (412) 394-2555
lfouse@clarkhill.com

*Counsel for Defendant Taro
Pharmaceuticals U.S.A., Inc.*

/s/ G. Robert Gage, Jr.

G. Robert Gage, Jr.
GAGE SPENCER & FLEMING LLP
410 Park Avenue
New York, NY 10022
Telephone: 212-768-4900
grgage@gagespencer.com

Counsel for Defendant Ara Aprahamian

/s/ Larry H. Krantz

Larry H. Krantz
Jerrold L. Steigman
KRANTZ & BERMAN LLP
747 Third Avenue, 32nd Floor
New York, NY 10017
Telephone: (212) 661-0009
Facsimile: (212) 355-5009
lkrantz@krantzberman.com
jsteigman@krantzberman.com

Counsel for Defendant James Brown

/s/ Thomas H. Suddath, Jr.

Thomas H. Suddath, Jr.
Anne E. Rollins
Thomas P. Reilly
REED SMITH LLP
Three Logan Square
1717 Arch Street, Suite 3100
Philadelphia, PA 19103
tsuddath@reedsmith.com
arollins@reedsmith.com
treilly@reedsmith.com

Michael E. Lowenstein
REED SMITH LLP
Reed Smith Centre
225 Fifth Avenue
Pittsburgh, PA 15222
mlowenstein@reedsmith.com

Counsel for Defendant Maureen Cavanaugh

/s/ Amy B. Carver

Amy B. Carver
WELSH & RECKER, P.C.
306 Walnut Street
Philadelphia, PA 19106
Telephone: (215) 972-6430
abcarver@welshrecker.com

*Counsel for Defendant Tracy Sullivan
DiValerio*

/s/ James A. Backstrom

James A. Backstrom
**JAMES A. BACKSTROM,
COUNSELLOR AT LAW**
1515 Market Street, Suite 1200
Philadelphia, PA 19102-1923
Telephone: (215) 864-7797
jabber@backstromlaw.com

Counsel for Defendant Marc Falkin

/s/ Robert E. Connolly

Robert E. Connolly
**LAW OFFICE OF ROBERT
CONNOLLY**
301 N. Palm Canyon Dr.
Palm Springs, CA 92262
Telephone: (215) 219-4418
bob@reconnollylaw.com

Counsel for Defendant James Grauso

/s/ Robert E. Welsh, Jr.

Robert E. Welsh, Jr.
Alexandra Scanlon Kitei
WELSH & RECKER, P.C.
306 Walnut Street
Philadelphia, PA 19106
Telephone: (215) 972-6430
Facsimile: (215) 972-6436
rewelsh@welshrecker.com
akitei@welshrecker.com

Counsel for Defendant Kevin Green

/s/ Jeffrey D. Smith

Jeffrey D. Smith
Alice Bergen
**DECOTIIS, FITZPATRICK, COLE &
GIBLIN, LLP**
61 South Paramus Road
Paramus, NJ 07652
Telephone: (201) 907-5228
jsmith@decotiislaw.com
abergen@decotiislaw.com

Counsel for Defendant Robin Hatosy

/s/ Erica S. Weisgerber

Erica S. Weisgerber
DEBEVOISE & PLIMPTON LLP
919 Third Avenue
New York, NY 10022
Telephone: 212-909-6000
Facsimile: 212-909-6836
eweisgerber@debevoise.com

Edward D. Hassi (D.C. Bar No. 1026776)
DEBEVOISE & PLIMPTON LLP
801 Pennsylvania Avenue, N.W.
Washington, DC 20004
Telephone: 202-383-8000
Facsimile: 202-383-8118
thassi@debevoise.com

Counsel to Defendant Armando Kellum

/s/ Michael G. Considine

Michael G. Considine
Laura E. Miller
SEWARD & KISSEL LLP
One Battery Park Plaza
New York, NY 10004
considine@sewkis.com
millerl@sewkis.com

Counsel for Defendant Jill Nailor

/s/ L. Barrett Boss

L. Barrett Boss
S. Rebecca Brodey
Thomas J. Ingalls
COZEN O'CONNOR P.C.
1200 19th Street NW, Suite 300
Washington, DC 20036
Telephone: (202) 912-4814
Facsimile: (866) 413-0172
bboss@cozen.com
rbrodey@cozen.com
tingalls@cozen.com

Peter M. Ryan
COZEN O'CONNOR P.C.
One Liberty Place
Philadelphia, PA 19103
Telephone: (215) 665-2130
Facsimile: (215) 701-2157
pryan@cozen.com

Counsel for Defendant James Nesta

/s/ Bradley Love

Bradley Love
Larry Mackey
Neal Brackett
Alyssa C. Hughes
BARNES & THORNBURG LLP
11 South Meridian Street
Indianapolis, IN 46204
Telephone: (317) 236-1313
bradley.love@btlaw.com
larry.mackey@btlaw.com
neal.brackett@btlaw.com
alyssa.hughes@btlaw.com

Counsel for Defendant Nisha Patel

/s/ David Schertler

David Schertler
Tara Tighe
**SCHERTLER ONORATO MEAD &
SEARS, LLP**
901 New York Avenue, N.W.
Suite 500 West
Washington, DC 20001
Telephone: (202) 628-4199
Facsimile: (202) 628-4177
dschertler@schertlerlaw.com
ttighe@schertlerlaw.com

*Counsel for Defendant Konstantin
Ostaficiuk*

/s/ Sozi Pedro Tulante

Sozi Pedro Tulante
Jeffrey J. Masters
Carla G. Graff
DECHERT LLP
Cira Centre Suite 500 West
2929 Arch Street
Philadelphia, PA 19104
Telephone: (202) 994-4000
Facsimile: (202) 994-2222
sozi.tulante@dechert.com
jeffrey.masters@dechert.com
carla.graff@dechert.com

Counsel for Defendant David Rekenhalter

/s/ David Reichenberg

David Reichenberg
COZEN O'CONNOR P.C.
277 Park Avenue, 20th Floor
New York, NY 10172
Telephone: (212) 883-4956
dreichenberg@cozen.com

Stephen A. Miller
Calli Jo Padilla
COZEN O'CONNOR P.C.
1650 Market Street
Suite 2800
Philadelphia, PA 19103
Telephone: (215) 665-6938
Facsimile: (215) 253-6777 (fax)
samiller@cozen.com
cpadilla@cozen.com

Counsel for Defendant Richard Rogerson